S.P.H. DE SILVA LTD. v. BALWANT SINGH

[A.C.J. (Smith J.) May 9, 1960]

[Ipoh — Civil Appeal No. 17 of 1959]

Contract — Unincorporated association — Powers of committee to bind members by contracting on their behalf — Rules of Association — Not to be construed as giving authority to pledge credit of members in absence of plain intention — Personal liability of secretary — Contracts (Malay States) Ordinance, 1950, s.188.

Club law — Secretary contracting without authority — Personal liability — Interpretation of Rules of Association.

The respondent was at all material times the Honorary Secretary of the Perak Amateur Athletic Association (an unincorporated association composed of private individuals and other unincorporated associations) and had purchased athletic trophies at various dates from the appellant company purportedly on behalf of the said Association. The balance of the account not having been paid the appellant company decided to sue the respondent averring that he was personally responsible for the amount due since he had no authority either express or by law to incur these debts on behalf of the Association.

The appellant company contended that the respondent had no authority from the Association and was therefore liable in his personal capacity. On behalf of the respondent it was argued that the Rules of the Association were so drawn that they were wide enough to enable members of the committee to pledge the credit of the Association; in particular rule 9(d) (which gives the committee power to deal with any matter pertaining to athletics in the State of Perak) was so wide that it enabled the Honorary Secretary to enter into credit transactions on behalf of the Association. Secondly, it was contended that the fact that the amount due to the appellant company had been shown in the balance sheets of the Association each year implied that the members of the Association have agreed to the Secretary pledging the credit of the members of the Association.

Held: (1) the rules of an association will not be construed as giving authority to pledge the credit of the members in the absence of a plain indication of intention to that effect. The Rules of the Perak Amateur Athletic Association do not confer any authority, express or implied, enabling members of the committee to pledge the credit of the members of that Association. *Wise* v. *Perpetual Trustee Co. Ltd.*(4) applied;

(2) no ratification of the respondent's acts could be implied from the fact that the amount due to the appellant company had been shown in the balance sheets of the Association each year. *Blackburn & Dist. Benefit Bldg. Society* v. *Cunliffe, Brooks & Co.*(5) followed;

(3) accordingly the respondent had no authority to contract on behalf of the Association as a whole and was liable to the appellant company for the amount due under section 188 of the Contracts (Malay States) Ordinance, 1950.

Cases referred to:—

(1) *Montgomerie* v. *United Kingdom Mutual Steamship Assn.*, [1891] 1 Q.B. 370.

(2) *Starkey* v. *Bank of England*, [1903] A.C. 114.

(3) *Bradley Egg Farm Ltd.* v. *Clifford*, [1943] 2 All E.R. 378.

(4) *Wise* v. *Perpetual Trustee Co. Ltd.*, [1903] A.C. 139.

(5) *Blackburn and District Benefit Building Society* v. *Cunliffe, Brooks & Co.*, [1885], 29 Ch.D. 902.

APPEAL from the judgment of the President Sessions Court, Ipoh.

W. J. Huntsman for the appellant.

F. C. Arulanandom for the respondent.

Cur. Adv. Vult.

Smith J.: This is an appeal by a limited company carrying on a business as silversmiths against the judgment of the learned President of the Sessions Court refusing the company judgment for the sum of $1,669.65 for breach of warranty of authority.

The facts of the case are not in any way in dispute. The defendant respondent was at all material times the Honorary Secretary of the Perak Amateur Athletic Association and in such capacity purchased athletic trophies from the plaintiff appellant company purportedly on behalf of the said Association. The goods were purchased on various dates between 1st January, 1954 and 10th Angust, 1956, and on 1st January, 1957, after taking into account a cash payment of $300 a balance of $1,669.65 was owing. The trophies were collected by another official of the Association and never by the defendant personally. The balance of the account not having been paid the company decided to sue the defendant averring that he was personally responsible for the amount due since he had no authority either express or by law to incur these debts on behalf of the Association. The Perak Amateur Athletic Association is an unincorporated association composed of private individuals and other unincorporated associations such as football clubs and it operates under a set of rules.

In this case the defendant was known to be an agent and the principal the Perak Amateur Athletic Association was named. The general rule is that the contract is the contract of the principal, and not that of the agent; and, *prima facie*, at common law the only person who can sue is the principal, and the only person who can be sued is the principal. (*Per* Wright J. in *Montgomerie* v. *United Kingdom Mutual Steamship Association*(1) at p. 371).

This, however, is subject to the agent having the authority to bind the principal (see *Starkey* v. *Bank of England*(2)). It is alleged by the appellant company in this case that the respondent had no authority from the Association. The general rule is that an unincorporated association such as a club is not a competent contracting party. If a contract is made on its behalf no individual member can be sued upon it except the person who actually made it and any other members who authorised him to do so (see *Bradley Egg Farm, Ltd.* v. *Clifford* (3)).

It was contended by the respondent that the rules of the Association were so drawn that they were wide enough to enable members of the committee to pledge the credit of the Association. Attention was drawn particularly to rule 9 which reads as follows:

"9. POWERS OF THE COMMITTEE: The Committee shall have power (a) to appoint sub-committees, (b) to frame bye-laws for the proper management of the affairs of the Association, (c) to invite distinguished individuals to become Patrons, (d) to deal with any matter pertaining to Athletics in the State of Perak."

It was argued that these powers particularly (d) are so wide that it enabled the Honorary

Secretary to enter into credit transactions on behalf of the Association. It is common ground between the parties that the question of the powers of the committee to bind the members as regards contracts with tradesmen depends upon the rules. Rules will not be construed as giving authority to pledge the credit of the members in the absence of a plain indication of an intention to that effect because it is generally understood that persons by joining a club do not intend to incur any liability beyond the subscriptions payable according to the rules so long as they remain members (see *Wise* v. *Perpetual Trustee Company Limited*[4]). Looking at the rules of the Perak Amateur Athletic Association as a whole I cannot read into them any authority express or implied enabling members of the Managing Committee to pledge the credit of the members of the Association by contracting on their behalf.

It has been argued by the respondent that because the amount due to the appellant company has been shown in the balance sheets of the Association each year it must be implied that the members of the Association have agreed to the Secretary pledging the credit of the members of the Association. This proposition is attractive but it is not free of authority. The case in point is *Blackburn and District Benefit Building Society* v. *Cunliffe, Brooks & Co.*[5] which is a decision of the Court of Appeal. In that case the society which had never been incorporated and had no power to borrow money was allowed by its bankers to make large overdrafts at the request of the directors of the society. Annual balance sheets showing the amounts due to the bankers were sent to all members of the society and adopted at the annual meetings. It was held that there had been no ratification of such acts of the directors by all the members of the society as such ratification could not be implied from merely seeing and not questioning the balance sheet accounts which had been sent to them, and no ratification of such acts by the majority would bind the minority of the members.

The position is therefore that there never was any general authority from the members of the Association to the Committee to pledge its credit and therefore when the respondent purported to act on behalf of the Association as a whole he had no authority so to do. The position of the appellant is, I consider, well described by Scott L.J. at page 386 of the *Bradley Egg Farm*[3] case, *supra*, in the following words:

"That the plaintiffs intended to make a real contract with somebody is beyond doubt; but it is equally beyond doubt that they had never formed any intention in their own minds beyond the vague one of making a contract with the person or persons the law would hold responsible on the contract. They did not, of course, think about it at all; they merely assumed, with the confidence natural to a nation which normally carries out its contracts, that somebody would be responsible. They expected performance and not breach; but the rest was assumption which they never even began to think out."

It may well be that the General Committee of the Association has ratified the action of the respondent, and it may well be that he is entitled to contribution from them. I am, however, satisfied that the respondent who purported to contract on behalf of the Association is liable for the balance of the account in the name of the Association because he contracted on behalf of the Association without authority and is therefore liable to make compensation to the appellant by virtue of the provisions of section 188 of the Contracts (Malay States) Ordinance, 1950.

This appeal must therefore be allowed and judgment entered for $1,169 (an interim payment of $500 having been made since the suit was instituted) together with interest at the rate of 6 per cent from the 28th day of March, 1959, being the date on which the judgment of the President of the Sessions Court was delivered together with costs of the suit and of this appeal as taxed by the proper officer of the Court.

Appeal allowed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Braddell & Ramani.*

RURAL AND INDUSTRIAL DEVELOPMENT AUTHORITY v. MOHAMED BIN DAUD & ORS.

[O. C. J. (Hepworth J.) May 12, 1960]

[Kuala Trengganu — Civil Suit No. 21 of 1958]

Practice and Procedure — Corporation — Appearance — Statutory corporation — Delegation of authority "to sue or defend" — Rural and Industrial Development Authority Ordinance, 1953, ss.2, 3 and 12.

In this case the Assistant Rural Development Officer, Trengganu, purported to appear on behalf of the plaintiff. As his authority for so doing he produced a document which was signed by the Chairman of the R.I.D.A. which purported to delegate to him "power and authority to sue or defend on behalf of the Authority and for such purpose to attend and appear on behalf of the Authority at any proceedings . . ." Under the Ordinance, the only way in which a person who is not a member of the Authority can be authorised to carry out any of the duties, powers or functions of the Authority is for a Committee so authorised by the Authority in the delegation of authority to that Committee to delegate its powers to that person.

Held: the document produced by the Assistant Rural Development Officer did not delegate any power of the Authority to him and therefore the Court could not hear him.

Cases referred to:—

(1) *Carltona Ltd.* v. *Works Commissioners* [1943] 2 All E.R. 560.

(2) *Frinton U.D.C.* v. *Walton Sand, etc. Co.* [1938] W.N. 31.

SUMMONS FOR JUDGMENT.

Defendants in person.

Hepworth J.: In a Summons for Judgment in this Suit in which the Rural and Industrial Development Authority was the Plaintiff, the Assistant Rural Development Officer, Trengganu, purported to appear on behalf of the Plaintiff. As his authority for so doing he produced a